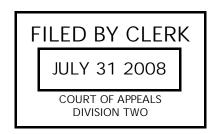
NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.



IN THE COURT OF APPEALS STATE OF ARIZONA DIVISION TWO

THE STATE OF ARIZONA,)			
)	2 CA-CR 2007-0150		
	Appellee,)	DEPARTMENT A		
)			
v.)	MEMORANDUM DECISION		
)	Not for Publication		
JESSICA MARIE VASS,)	Rule 111, Rules of		
)	the Supreme Court		
	Appellant.)			
		_)			
APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY Cause No. CR-20060316					
	AFFI	RMED			
Terry Goddard, Arizona Atto	orney General				
By Kent E. Cattani and Kathryn A. Damstr			Tucson		
			Attorneys for Appellee		
Harriette P. Levitt			Tucson		
			Attorney for Appellant		

HOWARD, Presiding Judge.

- ¶1 After a jury trial, appellant Jessica Vass was convicted of two counts of negligent homicide and aggravated assault with a deadly weapon and one count of criminal damage. The convictions arose from a high-speed car race during which the vehicle Vass was driving collided with another vehicle, killing the two occupants of the other vehicle and injuring the two passengers in her car. The trial court imposed concurrent, aggravated and presumptive sentences, the longest of which was 3.5 years. On appeal, Vass argues there was insufficient evidence to sustain the aggravated assault convictions and that, because the *mens rea* required for aggravated assault and negligent homicide are incompatible, inconsistent verdicts resulted. She contends we should vacate the aggravated assault convictions and sentences. We affirm.
- On appeal, we view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the jury's verdicts. *See State v. Cropper*, 205 Ariz. 181, ¶2, 68 P.3d 407, 408 (2003). Vass argues the record does not support the aggravated assault convictions. Additionally, she maintains that, because she was convicted of negligent homicide, the mental state for which is that the defendant has "fail[ed] to perceive a substantial and unjustifiable risk,"¹ and acquitted of manslaughter, she cannot also be guilty of aggravated assault based on recklessness, an offense that requires a showing that the defendant was "aware of and consciously disregard[ed] a substantial and unjustifiable risk."²

¹See A.R.S. §§ 13-1102, 13-105(9)(d).

²See A.R.S. §§ 13-1203(A)(1), 13-105(9)(c).

¶3 Vass appears to suggest that, because the passengers in her vehicle testified they did not believe she had intended to harm them and because they were not concerned about their safety before the accident, this somehow shows that she had failed to perceive the risks associated with her conduct. Therefore, she argues, she did not have the requisite mental state to support the aggravated assault convictions. However, the evidence established that Vass had been racing another vehicle at a speed greater than 105 miles per hour on a city street, far in excess of the posted, thirty-five-mile-per-hour speed limit when the accident occurred. At trial, Vass characterized her own conduct as "stupid" and "dumb" and testified she "wasn't thinking that [her conduct] was dangerous at the time." See State v. Cox, 217 Ariz. 353, ¶ 27, 174 P.3d 265, 269 (2007) (credibility of witnesses and weight and value given to testimony are jury questions). Notwithstanding Vass's testimony, which the jury apparently rejected, and based on other evidence presented at trial, the jury reasonably could have found the evidence sufficient to support a finding under A.R.S. § 13-105(c) that Vass had been "aware of and consciously disregard[ed] a substantial and unjustifiable risk" that others might be seriously injured by her conduct and that such a risk constituted "a gross deviation from the standard of conduct that a reasonable person would observe in the situation." See State v. Miles, 211 Ariz. 475, ¶27, 123 P.3d 669, 676 (App. 2005) (evidence that defendant drove truck through stop sign and collided with another truck sufficient to support finding of defendant's recklessness).

¶ 4	In a related argument, Vass contends one could not fail to perceive a risk while
at the same ti	me be aware of and consciously disregard that same risk. Thus, she argues, the
verdicts are	incompatible. Assuming without deciding that these verdicts are in fact,
inconsistent,	the law in Arizona clearly permits such verdicts. See Evanchyk v. Stewart, 202
Ariz. 476, ¶ 1	17, 47 P.3d 1114, 1119 (2002); State v. Zakhar, 105 Ariz. 31, 32, 459 P.2d 83,
84 (1969).	
¶5	Accordingly, Vass's convictions and sentences are affirmed.

	JOSEPH W. HOWARD, Presiding Judge
CONCURRING:	
J. WILLIAM BRAMMER, JR., Judge	
GARYE L. VÁSQUEZ, Judge	